APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1974

Civil Action 2258-72
No. 74-2042

DICK JONES, ET AL.,
Appellants

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, ET AL.

Before: MacKinnon and Wilkey, Circuit Judges

ORDER

On consideration of appellants' motion for summary reversal, of appellees' motions to dismiss appeal and for summary affirmance, and of appellees' motion to extend time to file reply to appellants' oppositions to the motions to dismiss and for summary affirmance, and of the responses of the parties with respect to the foregoing motions, it is

ORDERED by the Court that the Clerk is directed to file appellees' reply, it is

FURTHER ORDERED by the Court that appellees' motion to dismiss is granted. See Williams v. Mumford, 73-2120 (decided Feb. 10, 1975). and it is,

FURTHER ORDERED by the Court that the other motions are denied.

Per Curiam

[Dated: February 12, 1975]

[Caption Omitted in Printing]

Before: Bazelon, Chief Judge; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb, Wilkey, Circuit Judges

ORDER

Appellants' suggestion for rehearing *en banc* has been transmitted to the full court and there not being a majority of the judges in regular active service in favor of having this case reheard *en banc*, it is

ORDERED by the Court, *en banc*, that appellants' aforesaid suggestion is denied.

Per Curiam

For the Court:
Hugh E. Kline
Clerk

By: /s/ Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk

[Dated: April 11, 1975]

Chief Judge Bazelon, and Circuit Judges Wright, Leventhal and Robinson would grant rehearing *en banc* for the reasons set forth in Judge Robinson's statement of April 4, 1975, in No. 73-2120, ***Joslyn N. Williams*** v. ***L. Quincy Mumford, Librarian of Congress, et al.***

[Caption Omitted in Printing]

ORDER

The plaintiffs filed their complaint on November 13, 1972. The motion for class action certification was filed June 10, 1974, some 20 months after commencement of the action and following a long history of motions, arguments and appellate proceedings. *Fed. R. Civ. P.* 23(c)(1) requires the filing of a class certification motion "as soon as practicable after the commencement of (the) action." Rule 1-13(b) of this Court requires the filing of such a motion within 90 days after the complaint is filed. It is, then, obvious that plaintiffs' motion for class certification is untimely. *Adise* v. *Mather*, 56 F.R.D. 492, 494-95 (D. Colo. 1972). A delay of 20 months can not be said to be "as soon as practicable," notwithstanding the stay of discovery ordered by this Court and the lengthy time during which this action was on appeal. A different result is not called for, as plaintiffs urge, because the local rule became effective *after* the complaint was filed. The Court, accordingly, declines to grant class action certification.*

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* Putting aside the question of timeliness, on the present state of the record the Court has serious misgivings as to whether the necessary prerequisites for class action certification are present. The sole remaining issue in the case is the management of the relocation program. It is not apparent that any of the named plaintiffs is directly challenging that program, or that, if he is, his claim is typical of the claims of members of the purported class. Nor does it appear that the plaintiffs could, in view of their previous attempts to halt the housing program, fairly and adequately protect the interests of the members of the purported class which will benefit from that program. *Fed. R. Civ. P.* 23(a).

In view of the foregoing, plaintiffs' motion for postponement of the ruling on class certification is mooted, as is their motion for enlargement of time to reply to defendants' supplemental memoranda.

SO ORDERED.

Dated: August 22, 1974

/s/ H. F. Corcoran
Judge

DISTRICT OF COLUMBIA

Statement by the President on Actions and Recommendations for the Federal City.
January 31, 1969

Responsibility begins at home.

The District of Columbia is the Federal City, and the Federal Government cannot evade its share of responsibility for the conditions of life in the District.

For many who live here, those conditions have become intolerable. Violent crimes in the District have increased by almost three times in the last 8 years; only 2 days ago, the local newspapers carried a report that armed robberies had more than doubled in the past year alone.

This violence—raw, vicious violence, hurting most of all those who are poor and work hard—is the surface manifestation of far deeper troubles.

These troubles have been long building. In part, Washington today is reaping a whirlwind sown long since by rural poverty in the South, by failures in education, by racial prejudice, and by the sometimes explosive strains of rapid social readjustments.

Because its roots are deep and closely woven, crime in the District cannot be brought under control overnight. Neither can poverty be ended or hatred eliminated or despair overcome in a year. But we can begin.

In the 11 days since the new administration took office, I have asked the departments and agencies concerned to make an intensive study—as a matter of first priority—of actions that could be taken now toward curbing crime and improving the conditions of life in the city of Washington.

I wish I could report that we had produced a magic formula that would end crime and sweep away despair overnight. We have not. I have determined on a number of actions and recommendations which will provide a start.

These include:

—A swift start on restoring those areas devastated nearly 10 months ago.

—A package of proposals that can at least help toward restoring the safety of life and property.

—A commitment to give the people of the District of Columbia the voice they legitimately should have in the public policies that affect their lives.

Before detailing these measures I would like to make two points, both of which may help set the measures themselves in perspective.

I am pleased to report, first, that Mayor Washington and I, together with key members of our respective administrations, have established the basis for what I confidently expect will be the most effective cooperation yet achieved in the relations between the Federal and city governments.

The basic framework within which we both intend to operate is one of local initiative and responsibility, and the fullest possible Federal support—not only in terms of the necessary money, but also by involving the vast array of technical assistance available from within the Federal departments and agencies headquartered here.

Second, the great majority of these actions and recommendations are in the fields of crime control and the administration of justice. I recognize full well that crime and violence are only part of the complex interweave of problems the District faces, and that in the long run

crime itself also requires much more far-reaching and subtle approaches. But the rapidly mounting urgency of the crime crisis in the District marks immediate, direct anticrime measures as the first-priority.

There is another reason for this early and urgent emphasis. Crime in America today is both a primary local responsibility and a primary national concern. Here in the District, the Federal Government bears a special responsibility and has a unique opportunity. By searching for new ways of applying the resources of the Federal Government in the war against crime here, we may discover new ways of advancing the war against crime elsewhere.

These measures are by no means a comprehensive list. They represent things that are clearly needed and can be done now. Other crime control measures will follow, and also additional measures to meet the vast array of the District's other needs.

Restoring the Devastated Areas

Scarcely any of the shops and homes destroyed during the riots of last April have been rebuilt, and very few of those damaged have been made habitable or usable again. These rotting, boarded-up structures are a rebuke to us all, and an oppressive, demoralizing environment for those who live in their shadow. They remind us again of the basic fact that the principal victims of violence are those in whose neighborhoods it occurs.

It is not enough merely to patch up what now exists: we must truly rebuild.

The people of the District—especially, of course, the people who live in these areas, and those who own the land—must decide the purposes for which these blocks will be used. The Federal Government can, however,

pledge its full support for those Federal programs which can enable such redevelopment to proceed, and can further pledge the utmost Executive energy in responding to formal applications from the District.

We have already begun.

Specifically, Secretary Romney informed me today that the Department of Housing and Urban Development has approved a 29.7 million dollar neighborhood development plan for the Shaw area, including the major portion of the 7th Street neighborhood damaged during last April's riots. This plan, the result of several years of preparation, is an accomplishment of which this city can be proud.

It took Secretary Romney's department less than 24 hours to approve this plan for the Shaw area, once it was approved by the City Council last Tuesday and submitted for Federal approval Wednesday evening. This unprecedented process illustrates the commitment of this administration to the meeting of the urgent needs of the Capital City.

Mayor Washington has indicated that he intends to seek similar assistance under the Housing and Urban Development Act of 1968 for rehabilitation of the two major areas of riot damage not covered in the Shaw plan—the areas along 14th Street and H Street. I can assure him that this administration will respond with the same sense of urgency to his request for help in these areas.

He has promised me a tight but serious timetable under which the first construction in these areas would begin next fall.

While the city prepares for this construction—and decides what to do with the 14th and H Street areas—the Department of Housing and Urban Development will

make available $1 million in special interim assistance for improvements in some of the blighted areas. This morning, I watched the first cranes at work clearing rubble to make way for a temporary playground. The District has plans for swings, slides and swimming pools where now there is charred rubble. Street lighting will be improved, roads and sidewalks repaired.

Under section 514 of the 1968 Housing and Urban Development Act, Mayor Washington has undertaken to provide ⅓ matching funds for this $1 million, and the District Government will take the initiative in deciding how this money will be spent. The limited assistance to be provided by the Federal Government under this interim program cannot by itself remake these areas. But it is a first step toward making them more livable, an earnest demonstration of our concern, and a first sign of hope.

[Caption Omitted in Printing]

MOTION TO CERTIFY CLASS

Pursuant to Rule 1-13(b) of the Rules of this Court, plaintiffs hereby move for certification under Rule 23(c)(1) and Rule 23(b)(2) of the Federal Rules of Civil Procedure that this action may be maintained as a class action on behalf of all persons who have been or are scheduled to be displaced or are otherwise substantially adversely affected by defendants' urban renewal activities within the Fourteenth Street Urban Renewal Area and who have not received or will not receive adequate relocation housing or other benefits to which they are entitled.

Respectfully submitted,

/s/ Louis F. Oberdorfer
LOUIS F. OBERDORFER

/s/ Cary B. Lerman
CARY B. LERMAN
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

[Caption Omitted in Printing]

ORDER

PER CURIAM.

It appearing that appellants' suggestion for rehearing *en banc* and amicus curiae's suggestion for rehearing *en banc* having been transmitted to the full Court and there not being a majority of the Judges in regular active service in favor of having this case reheard *en banc*, it is

Ordered by the Court *en banc* that the aforesaid suggestions for rehearing *en banc* are denied.

Statement of Circuit Judge SPOTTSWOOD W. ROBINSON, III, with whom Chief Judge BAZELON and Circuit Judges J. SKELLY WRIGHT and LEVENTHAL join, as to why they would grant rehearing *en banc*.

SPOTTSWOOD W. ROBINSON, III, Circuit Judge:

It is hardly necessary in this age to argue the worth of the class action in our ever-expanding system or [sic] jurisprudence. Over the years it has promoted the convenience of courts and parties infinitely, reduced the expense of lawsuits incalculably, and the [sic] contributed immeasurably to efficient judicial administration. It has, too, made its mark on the development of the law. The reports are dotted with landmark cases which without benefit of representative litigation would never have seen the light of day.

Even more profoundly, the class action has provided access to the judicial process for those who need it most. It has been the refuge of the poor, the hope of the downtrodden, and the salvation of the many whom our social institutions all too frequently victimize, unwittingly or otherwise. Truly it is said that "[t]he class action is one of the few legal remedies the small claimant has against those who command the status quo." [1]

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[1] Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 186, 94 S.Ct. 2140, 2156, 40 L.Ed.2d 732, 748 (1974) (Douglas, J. dissenting).

In sum, as two leading authorities have aptly observed, "[i]t now is apparent that the increasing complexity and urbanization of modern American society has tremendously magnified the importance of the class action as a procedural device for resolving disputes affecting numerous people." [2] And since class-action litigation could be chilled by nonappealability of denials of certifications save in narrowly limited circumstances, it is highly important to ascertain whether the panel's decision to that effect is correct.[3] The importance of the question is underscored by the number of decisions it has generated in other circuits, and the difficulty of the problems of the conflict of opinion which plagues them.[4]

I would, accordingly, grant rehearing of this case *en banc*. That is not necessarily to say that the panel reached the wrong result. It is to say, however, that in my view the matter calls for consideration and decision by the full court.

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[2] 7 C. Wright & A. Miller, Federal Practice § 1751, at 510 (1972).

[3] Rehearing *en banc* is warranted "when the proceeding involves a question of exceptional importance." Fed.R.App.P. 35(a)(2).

[4] *See* Yaffee v. Powers, 454 F.2d 1362, 1364-1365 (1st Cir. 1972); Caceres v. International Air Transport Ass'n, 422 F.2d 141, 142-144 (2d Cir. 1970); City of New York v. International Pipe and Ceramics Corp., 410 F.2d 295, 298-299 (2d Cir. 1969); Rodgers v. United States Steel Corp., 508 F.2d 152, 159-161 (3d Cir. 1975); Hackett v. General Host Corp., 455 F.2d 618, 621-626 (3d Cir.), cert. denied, 407 U.S. 925, 92 S.Ct. 2460, 32 L.Ed.2d 812 (1972); Brunson v. Board of Trustees, 311 F.2d 107, 108-109 (4th Cir. 1962), cert. denied, 373 U.S. 933, 83 S.Ct. 1538, 10 L.Ed.2d 690 (1963); Lamarche v. Sunbeam Television Corp., 446 F.2d 880 (5th Cir. 1971); Siebert v. Great Northern Dev. Co., 494 F.2d 510, 511 (5th Cir. 1974); Walsh v. City of Detroit, 412 F.2d 226, 227 (6th Cir. 1969); King v. Kansas City Southern Indus., 479 F.2d 1259, 1260 (7th Cir. 1973); Thill Sec. Corp. v. New York Stock Exchange, 469 F.2d 14, 15-17 (7th Cir. 1972); Price v. Lucky Stores, 501 F.2d 1177, 1179 (9th Cir. 1974); Gerstle v. Continental Airlines, 466 F.2d 1374, 1377 (10th Cir. 1972).

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